

Surface Transportation Board, DOT

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- 1039.16 Exemption of new highway trailers or containers.
 1039.17 Protective service contracts exemption.
 1039.20 Storage leases.
 1039.21 International joint through rates.
 1039.22 Exemption of certain payments, services, and commitments from the Elkins Act and related provisions.

AUTHORITY: 5 U.S.C. 553; 49 U.S.C. 10502 and 13301.

SOURCE: 47 FR 50262, Nov. 5, 1982, unless otherwise noted.

§1039.10 Exemption of agricultural commodities except grain, soybeans, and sunflower seeds.

The rail transportation of the commodities listed below is exempt from the provisions of subtitle IV of title 49, except that carriers must continue to comply with Board accounting and reporting requirements, including a brief statement in their annual reports of operations under this exemption, and must maintain copies of rates, charges, rules or regulations, for traffic moved under this exemption, at their principal office, subject to inspection, and send a letter of notification to the docket [Ex Parte No. 346 (Sub-No. 14)], within 30 days, of the fact that they are using the exemption. All tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply except to the extent adopted by carrier quotations. The categories of commodities which are exempt under this decision, by Standard Transportation Commodity Code (STCC) number are:

- 01 Farm products, with the exception of grain (STCC No. 0113), soybeans (STCC No. 01144), and sunflower seeds (STCC No. 0114940).
 09 Fresh fish and other marine products.
 20-11 Fresh meat.
 20-15 Fresh dressed poultry.
 20-17 Processed poultry.
 20-21 Creamery Butter.
 20-23 Condensed, Evaporated or Dried Milk.
 20-25 Cheese and Special Dairy Products.
 20-26 Processed Whole Milk.
 20-141 Hides and Skins.
 20-144 Animal refuse, tankage, or meat meal.
 20-421-27 Citrus pomace.
 20-712-12 Shelled walnuts.
 20-914-25 Cottonseed hulls.
 20-915 Cotton linters.
 20-999-29 Butter and honey mixed.
 20-999-41 Honey, comb, granulated or strained, or heat treated to retard granulation.
 20-999-76 Freeze-dried poultry.
 20-999-77 Freeze-dried meat.
 20-999-78 Freeze-dried salad ingredients.

- 20-999-93 Fresh and salted meat and products mixed, not hung.
 20-999-94 Fresh and salted meat and products mixed, hung and not hung.
 21-4 Stemmed or redried tobacco.
 22-811-30 Cotton, carded, dyed or not dyed, but not spun, woven or knitted, but including cotton lap.
 22-911-63 Mattress felt, nec, ciors, not finished.
 22-911-74 Felts, cotton, nec.
 22-971-35 Wool, nec, scoured.
 22-995-22 Flax fibre.
 22-999-26 Cotton linters, bleached or dyed.
 28-423-37 Beeswax.

and shall embrace all articles assigned additional digits. The STCC shall be those code numbers in effect as of January 1, 1979, as shown in Standard Transportation Commodity Code Tariff 1-G, STB STCC 6001-C. Nothing in this exemption shall be construed to affect our jurisdiction under section 10505 or our ability to enforce this decision or any subsequent decision made under authority of this exemption section. This exemption shall remain in effect, unless modified or revoked by a subsequent order of this Board.

[48 FR 9277, Mar. 4, 1983; 49 FR 22095, May 25, 1984, as amended at 49 FR 26745, June 29, 1984; 49 FR 27321, July 3, 1984; 64 FR 53267, Oct. 1, 1999]

§1039.11 Miscellaneous commodities exemptions.

(a) *Commodities exempted.* Except as indicated in paragraph (b) of this section, the rail transportation of the commodities listed below is exempt from the provisions of 49 U.S.C. subtitle IV. The Standard Transportation Commodity Code (STCC) numbers that identify the exempted commodities are those in effect on the effective date of the tariff cited, and shall embrace all commodities assigned additional digits.

| STCC No. | STCC tariff | Commodity |
|------------|----------------------|--|
| 14 1 | 6001-T, eff. 1-1-92. | Dimension stone, quarry. |
| 14 2 |do | Crushed or broken stone or riprap. |
| 14 411 ... |do | Sand (aggregate or ballast). |
| 14 412 ... |do | Gravel (aggregate or ballast). |
| 20 |do | Food or kindred products except 20 143 Grease or inedible tallow. 20 32 Canned specialties. 20 33 Canned fruits, jams, jellies, preserves or vegetables. 20 4 Grain mill products. 20 6 Sugar, beet or cane. 20 8 Beverages or flavoring extracts. |

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| STCC No. | STCC tariff | Commodity | STCC No. | STCC tariff | Commodity |
|----------------------------|---------------|--|---------------|-----------------------|---|
| | | 20 911 Cottonseed oil, crude or refined. | 37 14 |do | Motor vehicle parts or accessories. |
| | | 20 914 Cottonseed cake or meal or by-products. | 38 |do | Instruments, photographic goods, optical goods, watches or clocks. |
| | | 20 92 Soybean oil or by-products. | 39 |do | Miscellaneous products of manufacturing. |
| | | 20 93 Nut or vegetable oils or by-products. | 41 118 ... | 6001–U, eff. 1–1–93. | Used vehicles. |
| 22 |do | Textile mill products. | 14 715 ... | 6001–V, eff. 1–1–94. | Rock salt. |
| 23 |do | Apparel or other finished textile products or knit apparel. | 20 143 ... |do | Grease or inedible tallow. |
| 24 |do | Lumber or wood products. | 28 133 ... |do | Carbon dioxide. |
| 25 |do | Furniture or fixtures. | 28 991 ... |do | Salt. |
| 26 |do | Pulp, paper or allied products except | 32–4 |do | Hydraulic cement. |
| | | 26 1 Pulp or pulp mill products. | 34 912 ... | 6001–W, eff. 1–1–95. | Steel shipping containers. |
| | | 26 211 Newsprint. | 40 211 ... |do | Iron and steel scrap. |
| | | 26 212 Ground wood paper, uncoated. | 33 119 ... | 6001–X, eff. 1–1–96. | Blast furnace, open hearth, rolling mill or coke oven products, NEC. |
| | | 26 213 Printing paper, coated or uncoated, etc. | 20511 | 6001–X, eff., 1–1–96. | Bread or other bakery products exc. biscuits, crackers, pretzels or other dry bakery products. See 20521–20529. |
| | | 26 214 Wrapping paper, wrappers or coarse paper. | 22941 |do | Textile waste, garnetted, processed, or recovered or recovered fibres or flock exc. packing or wiping cloths or rags. See 22994. |
| | | 26 218 Sanitary tissue stock. | 22973 |do | Textile fibres, laps, noils, nubs, roving, sliver or slubs, prepared for spinning, combed or converted. |
| | | 26 471 Sanitary tissues or health products. | 22994 |do | Packing or wiping cloths or rags (processed textile wastes). |
| | | 26 6 Building paper or building board except | 24293 |do | Shavings or sawdust. |
| | | 26 613 Wallboard. | 30311 |do | Reclaimed rubber. |
| 27 |do | Printed matter. | 3229924 |do | Cullet (broken glass). |
| 28 195 |do | Iron chloride, liquid. | 33312 |do | Copper matte, speiss, flue dust, or residues, etc. |
| 22–23, 27–30, 28 195 |do | Iron sulphate. | 33322 |do | Lead matte, speiss, flue dust, dross, slag, skimmings, etc. |
| 68–69, 29 914 ... |do | Ferrous sulphate. | 33332 |do | Zinc dross, residues, ashes, etc. |
| 29 915 ... |do | Coke produced from coal. | 33342 |do | Aluminum residues, etc. |
| | | Distillate or residual fuel oil from coal refining. | 33398 |do | Misc. nonferrous metal residues, including solder babbitt or type metal residues. |
| 30 |do | Rubber or miscellaneous plastics products except | 40112 |do | Ashes. |
| | | 30 111 Rubber pneumatic tires or parts. | 40212 |do | Brass, bronze, copper or alloy scrap, tailings, or wastes. |
| 31 |do | Leather or leather products. | 40213 |do | Lead, zinc, or alloy scrap, tailings or wastes. |
| 32 |do | Clay, concrete, glass or stone products except | 40214 |do | Aluminum or alloy scrap, tailings or wastes. |
| | | 32 411 Hydraulic cement, natural, portland or masonry. | 4021960 |do | Tin scrap, consisting of scraps or pieces of metallic tin, clippings, drippings, shavings, turnings, or old worn-out block tin pipe having value for remelting purposes only. |
| | | 32 741 Lime or lime plaster. | 40221 |do | Textile waste, scrap or sweepings. |
| | | 32 95 Nonmetallic earths or minerals, ground or treated in any other manner except | 40231 |do | Wood scrap or waste. |
| | | 32 952 15 Cinders, clay, shale expanded shale), slate or volcanic (not pumice stone), or haydrite. | 40241 |do | Paper waste or scrap. |
| 33 |do | Primary metal products, including galvanized. | 40251 |do | Chemical or petroleum waste, including spent. |
| 34 |do | Fabricated metal products except | 40261 |do | Rubber or plastic scrap or waste. |
| | | 34 6 Metal stampings. | 4029114 |do | Municipal garbage waste, solid, digested and ground, other than sewage waste or fertilizer. |
| | | 34 919 40 Radioactive material shipping containers, etc. | 4029176 |do | Automobile shredder residue. |
| 35 |do | Machinery except | | | |
| | | 35 11 Steam engines, turbines, turbine generator sets, or parts. | | | |
| | | 35 85 Refrigerators or refrigeration machinery or complete air-conditioning units. | | | |
| 36 |do | Electrical machinery, equipment or supplies except | | | |
| | | 36 12 Power, distribution or specialty transformers. | | | |
| 37 11 |do | 36 21 Motors or generators. | | | |
| | | Motor vehicles. | | | |

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| STCC No. | STCC tariff | Commodity |
|----------|---------------|---|
| 4111434 |do. | Bags, old, burlap, gunny, istle (ixtle), jute, or sisal, NEC. |
| 41115 |do. | Articles, used, returned for repair or reconditioning. |
| 42111 |do. | Nonrevenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC, empty, returning in reverse of route used in loaded movement, and so certified. |
| 42112 |do. | Nonrevenue movement of shipping devices, consisting of blocking, bolsters, cradles, pallets, racks, skids, etc., empty, returning in reverse of route used in loaded movement, and so certified. |
| 42311 |do. | Revenue movement of containers, bags, barrels, bottles, boxes, crates, cores, drums, kegs, reels, tubes, or carriers, NEC., empty, returning in reverse of route used in loaded movement and so certified. |

Excluded from this exemption are any movements for which a finding of market dominance has been made. However, this exemption shall not be construed as affecting in any way the existing regulations, agreements, prescriptions, conditions, allowances or levels of compensation regarding the use of equipment, whether shipper or railroad owned or leased, including car hire, per diem and mileage allowances, and also including exemption from the anti-trust laws necessary to negotiate car service regulations or mandatory interchange of equipment or to maintain and execute such agreements. Nor shall this exemption be construed to affect existing Class III railroad "protections" in the case of boxcars.

(b) *Conditions.* Carriers must continue to comply with Board accounting and reporting requirements. All railroad tariffs pertaining to the transportation of these miscellaneous commodities will no longer apply. This exemption shall remain in effect, unless modified

or revoked by a subsequent order of this Board.

[48 FR 24901, June 3, 1983, as amended at 48 FR 33306, July 21, 1983; 48 FR 55744, Dec. 15, 1983; 54 FR 51402, Dec. 15, 1989; 56 FR 31547, July 11, 1991; 58 FR 4356, Jan. 14, 1993; 58 FR 27951, May 12, 1993; 58 FR 43818, Aug. 18, 1993; 58 FR 53434, Oct. 15, 1993; 59 FR 51134, Oct. 7, 1994; 59 FR 59663, Nov. 18, 1994; 59 FR 63926, Dec. 12, 1994; 60 FR 26840, May 19, 1995; 60 FR 38281, July 26, 1995; 61 FR 7426, Feb. 28, 1996; 61 FR 47446, Sept. 9, 1996; 61 FR 66231, Dec. 17, 1996; 63 FR 19665, Apr. 21, 1998]

§1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Board approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of section 10726.

(b) This exemption does not extend to review by the Board upon the filing of a formal complaint alleging a violation of section 10726. Board review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Board that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

[48 FR 9649, Mar. 8, 1983]

§1039.13 Rail intermodal transportation exemption.

See Part 1090.

[52 FR 23660, June 24, 1987]

§1039.14 Boxcar transportation exemptions and rules.

(a) The Rail transportation of all commodities in boxcars is exempt from